



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Ki P. Hong and Tyler Rosen
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue NW
Washington, DC 20005-2111

MAR -2 2016

RE: MUR.6938
HarperCollins Publishers, LLC

Dear Messrs. Hong and Rosen:

On May 21, 2015, the Federal Election Commission (the "Commission") notified your client, HarperCollins Publishers, LLC of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), or Commission regulations. On February 22, 2016, the Commission found, on the basis of the complaint and all available information, that there is no reason to believe that your client violated the Act or Commission regulations. Accordingly, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Saurav Ghosh, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler", written over a horizontal line.

Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Rand Paul for President, Inc. and MUR: 6938
4 Paul Kilgore in his official capacity
5 as treasurer
6 Senator Rand Paul
7 Peter Schweizer
8 HarperCollins Publishers LLC
9

10 **I. INTRODUCTION**

11 This matter was generated by a complaint filed with the Federal Election Commission
12 (the "Commission").¹ On March 25, 2015, journalist and author Peter Schweizer met with
13 Senator Rand Paul to discuss Schweizer's upcoming book, *Clinton Cash: The Untold Story of*
14 *How and Why Foreign Governments and Businesses Helped Make Bill and Hillary Rich*, which
15 was released to the public in May 2015. The Complaint alleges that in doing so, Schweizer made
16 an excessive in-kind contribution, and his publisher, HarperCollins Publishers LLC
17 ("HarperCollins"), made a prohibited corporate contribution to Paul and his presidential
18 authorized campaign committee, Rand Paul for President, Inc. ("the Committee"), by offering
19 access to information that Paul later used in his campaign. For the reasons explained below, the
20 Commission finds no reason to believe that Schweizer or HarperCollins made, and Paul or the
21 Committee received, an excessive or prohibited corporate in-kind contribution.

22 **II. FACTUAL AND LEGAL ANALYSIS**

23 **A. Factual Background**

24 Peter Schweizer is a journalist and author who has written books and articles on
25 government, public policy, and other topics. His most recent book, entitled *Clinton Cash: The*

¹ See 52 U.S.C. § 30109(a)(1).

1 *Untold Story of How and Why Foreign Governments and Businesses Helped Make Bill and*
2 *Hillary Rich*, was released by HarperCollins on May 5, 2015.² The book details his investigation
3 into purported conflicts of interest of former President Bill Clinton and his wife, former U.S.
4 Senator and Secretary of State Hillary Clinton, during Mrs. Clinton's time in public office. The
5 book focuses on alleged links between Hillary Clinton's actions as Secretary of State and foreign
6 donations in the form of speaking fees paid to Bill Clinton, as well as charitable gifts to the Bill,
7 Hillary & Chelsea Clinton Foundation, a Section 501(c)(3) nonprofit organization founded by the
8 Clintons in 2001.³

9 On March 25, 2015, just over a month before *Clinton Cash* was released, Schweizer met
10 for approximately one hour with Senator Rand Paul at his office to discuss the substance of the
11 book.⁴ Schweizer, HarperCollins, and the Committee each assert that the purpose of Schweizer's
12 meeting with Paul was to discuss the Clintons' purported conflicts of interest with a member of
13 the Senate Foreign Relations Committee.⁵ Schweizer states in a sworn affidavit that they only
14 "discussed the findings in [his] book, *Clinton Cash*; at no time did [they] discuss the presidential
15 election for 2016, or the possibility of either Senator Paul or Mrs. Clinton being a candidate for
16 President."⁶ Schweizer avers that he met with Paul because he believed he had a civic obligation

² Compl. at 2.

³ *Id.*

⁴ Schweizer Resp. at 4.

⁵ Schweizer Resp. at 4, 12; Cmte. Resp. at 1–2; see HarperCollins Resp. at 2. The Respondents also argue that the information conveyed in the discussion was not a "contribution," see Cmte. Resp. at 1–2, Schweizer Resp. at 4, HarperCollins Resp. at 2; alternatively, they argue that the alleged contribution would fall under the press exemption, see Schweizer Resp. at 10, HarperCollins Resp. at 4; the exemption for bona fide commercial activity, see Schweizer Resp. at 11, HarperCollins Resp. at 3; or the exemption for voluntary activity, see Schweizer Resp. at 6–8.

⁶ Schweizer Decl. ¶ 10.

1 “to bring information regarding possible unethical or illegal activity by current or former
2 government officials to the attention of a proper authority.”⁷ Schweizer states that during the
3 meeting, Paul suggested that Schweizer also meet with Senator Robert Corker, Chair of the
4 Senate Foreign Relations Committee, and Paul’s office arranged that meeting, which took place
5 two days later on March 27, 2015.⁸ Schweizer avers that these meetings were for “the sole
6 purpose of conveying important information to a member of the U.S. Senate Committee on
7 Foreign Relations.”⁹ Schweizer and HarperCollins both assert that Schweizer did not inform
8 HarperCollins of his intention to meet with either Paul or Corker, and that HarperCollins was not
9 aware that these meetings took place.¹⁰ Schweizer asserts that he was not compensated by
10 HarperCollins or anyone else for attending these meetings.

11 **B. Legal Standard**

12 Under the Federal Election Campaign Act of 1971, as amended (the “Act”), a
13 contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of
14 value made by any person for the purpose of influencing any election for Federal office.”¹¹
15 “Anything of value” includes all in-kind contributions, such as “the provision of any goods or
16 services without charge or at a charge that is less than the usual and normal charge for such
17 goods or services.”¹²

7 Schweizer Decl. at ¶ 12.

8 Schweizer Resp. at 4–5.

9 Schweizer Decl. ¶ 15.

10 Schweizer Resp. at 5; HarperCollins Resp. at 1.

11 52 U.S.C. § 30101(8)(A)(i).

12 11 C.F.R. § 100.52(d)(1).

1 The Act prohibits any person from making a contribution to a candidate for federal office
2 in excess of \$2,700 per election.¹³ The Act also prohibits corporations from making a
3 “contribution or expenditure” to any federal candidate or his or her authorized campaign
4 committee.¹⁴ With respect to corporations, “the term ‘contribution or expenditure’ . . . includes
5 any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any
6 services, or anything of value . . . to any candidate. [or] campaign committee . . . in connection
7 with any election”¹⁵

8 C. Discussion

9 The Complaint alleges that Schweizer’s provision of valuable non-public information to
10 Paul was an in-kind contribution to the Committee because Paul could use the information in his
11 campaign. The Complaint notes that the value of this in-kind contribution was “likely in excess
12 of \$2,700,” the current per-election limit for individual contributions to a candidate for federal
13 office.¹⁶ The Complaint adds that HarperCollins also made a prohibited corporate in-kind
14 contribution to Paul and the Committee.

15 The available information does not indicate that the meeting between Paul and Schweizer
16 resulted in an in-kind contribution to the Committee because it does not appear that Schweizer
17 provided Paul or the Committee with “anything of value” “for the purpose of influencing” a
18 federal election. While it is unclear what specific information in the book may have had any
19 unique value or how one would quantify a value for such information, any value ascribed to the

¹³ 52 U.S.C. § 30116(a)(1)(A); *see* 11 C.F.R. § 110.1(b).

¹⁴ 52 U.S.C. § 30118(a).

¹⁵ 52 U.S.C. § 30118(b)(2).

¹⁶ Compl. at 5.

1 information would have been diminished when Schweizer provided the information to others and
2 would have dissipated once the book was published a little over a month later. Furthermore, the
3 information in the record does not support the conclusion that Schweizer met with Paul “for the
4 purpose of influencing” the 2016 election. Schweizer states in a sworn affidavit that they
5 discussed only the findings of his book, and not the 2016 election.¹⁷ Schweizer further avers that
6 his meeting was for the purpose of engaging a prominent government official in an ongoing
7 public discussion about government officials’ purported conflicts of interest.

8 Under the circumstances, the record does not demonstrate that Schweizer or his publisher
9 provided a contribution within the meaning of the Act to Paul’s presidential campaign. The
10 Commission therefore finds no reason to believe that Schweizer or HarperCollins made, and Paul
11 or his authorized campaign committee received, an excessive or prohibited corporate in-kind
12 contribution.¹⁸

¹⁷ Schweizer Decl. ¶ 10.

¹⁸ Although Respondents raise arguments concerning the applicability of the volunteer exemption, the press exemption, and the exemption for *bona fide* commercial activity, the Commission need not address those arguments given that Schweizer and HarperCollins did not make a contribution to Paul or his authorized campaign committee.